

**TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION
Date: February 9, 2012**

SUBJECT: Concession Stand - Services and Management – Mountain Valley Park

SUBMITTING DEPARTMENT: Parks and Recreation

PREPARED BY: Brian Witty, CPRP, Parks and Recreation Director

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) “Mountain Valley Park Concession” Proposal – RG Keen – Keenco Inc/Franks Alot
b) Contract for Services – RG Keen

SUMMARY BACKGROUND: Town of Prescott Valley staff has completed their search for a Concessionaire to operate and manage the concessionaire service for Mountain Valley Park. This operation does not include those concessionaire services provided at the Mountain Valley Splash swimming pool. The search was based on a Request for Proposal process and two (2) applicants submitting proposals to the Town for review as reflected in Table 1 below. Selection of the Concessionaire was based on:

1. Meeting minimum qualifications.
2. The applicant that could provide the highest percentage of gross sales fees to the Town.

Town staff has reviewed the proposals and recommends award of the Concessionaire contract to RG Keen of Keenco Inc/Franks Alot. This Concessionaire would anticipate an opening date of Sunday, March 4, 2012.

Table 1

RANK	APPLICANT	AFFILIATION	MET MINIMUM QUALIFICATIONS (YES / NO)	PERCENT OF GROSS SALES FEES TO TOWN
1	RG Keen	Keenco Inc/Franks Alot	Yes	25%
2	Richard Andrada	Pres. PV Little League	Yes	22%

OPTION ANALYSIS: The Council may vote to:

- 1.) Award the Mountain Valley Park Concessionaire contract to RG Keen, **OR**
- 2.) Reject all submittals, **AND/OR**
- 3.) Direct staff to pursue other options

ACTION OPTION: Motion to award the Mountain Valley Park Concessionaire contract to RG Keen, **OR** Motion to reject all submittals. **VOTE**

RECOMMENDATION: Staff recommends award of the Mountain Valley Park Concessionaire contract to RG Keen.

FISCAL ANALYSIS: Award of this contract based on the submittal with the highest percentage of gross sales fees to the Town will hopefully provide needed revenue to the Town over the term of the contract.

REVIEWED BY:

Management Services Director _____

Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to _____



Town of Prescott Valley
7501 E. Civic Circle
Prescott Valley, AZ 86314

CONCESSION AGREEMENT
Mountain Valley Park

THIS AGREEMENT, entered into this 9th day of February, 2012, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, (“Town”), and RG Keen of Keenco Inc/Franks Alot (“Concessionaire”);

WITNESSETH:

WHEREAS, the Town is expressly authorized to establish and maintain public parks and facilities, and implied therein is authority to establish and operate recreation programs in the parks and in other public grounds and facilities [ARS §§9-494 (A) and 11-932 (A)]; and

WHEREAS, in providing recreation programs, the Town has implied power to charge fees for said programs and related services [Maricopa County v. Maricopa County Mun. Water Cons, 171 Ariz. 325 (App. 1991)], and may hire its own staff or enter into contracts with third parties to provide the services [ARS §11-932(A); Town of Tempe v. Corbell, 17 Ariz. 1 (1915)]; and

WHEREAS, the Town has historically provided a refreshment stand (“Concession”) during events held in the 4-plex, Skatepark and Pavilion athletic field (“Premises”) at Mountain Valley Park (“Park”), either through concession agreements with private vendors or through Town employees and/or volunteers; and

WHEREAS, the Town has determined to again offer a concession agreement to a private vendor to operate the Concession through a public request for proposal (“RFP”) process; and

WHEREAS, the proposal provided by the Concessionaire during the RFP process has been found to be the most beneficial for the Town and public, and the Town desires now to enter into this Concession Agreement with the Concessionaire as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, and

the faithful performance thereof, the parties hereto agree as follows:

SECTION ONE. PURPOSE. The purpose of this Agreement is to grant to the Concessionaire a non-exclusive right to operate the Concession on the Premises, at the same time events are held in the 4-Plex, Skatepark, and Pavilion athletic field, during the term of this Agreement (in compliance with the conditions set forth herein).

SECTION TWO. CONTRACT TERM. The term of this Agreement shall be two (2) calendar years from the date first-above written. The parties agree in good faith to consider an additional three (1) year-terms if the provisions of this Agreement have been fully met by the Concessionaire during the course of the initial term.

Upon termination of this Agreement for any reason, the Concessionaire may remove any personal property belonging to it, providing the same is removed within ten (10) days after said termination. Upon termination the Concessionaire shall immediately surrender and give peaceable possession of the Premises.

SECTION THREE. PAYMENT TO TOWN. The Concessionaire agrees to pay the Town twenty-five percent (25%) of the gross receipts received by the Concessionaire from the sale of food, drinks, and other approved saleable items (exclusive of transaction privilege taxes) as part of the Concession. The Concessionaire must remit payment to the Management Services Department no later than the tenth (10th) day of the month for all gross revenues received by the Concessionaire during the preceding month. After the 10th day of each month, a five dollar (\$5.00) per day fee will be added until payment is received or this Agreement is terminated.

While operating the Concession, the Concessionaire shall maintain a cash register system. Daily register receipts must accompany accounting records upon remittance of the monthly payment.

The Vendor shall pay the Town of Prescott Valley a security deposit equal to \$500.00. The security deposit shall be held by the Town as security for payment of all commissions and other amounts due from the Vendor to the Town, for the performance of the Vendors' obligations under this Agreement, and against any damages caused to the Premises by the Vendor or their invitees or licensees to the Premises. The Vendor understands and agrees that the security deposit may not at their option be applied as commission or against any other amount due from the Vendor to the Town and that the monthly commission will be paid each month including the last month of the Agreement term. Assuming all obligations of the Vendor have been paid and the Vendor is not in breach of any of the terms of this Agreement, then upon expiry or termination of this Agreement the security deposit shall be returned to the Vendor in accordance with applicable law. In the event all obligations of Vendor have not been paid, the security deposit will be returned to the Vendor less deductions in accordance with applicable law.

SECTION FOUR. TOWN PERFORMANCE. The Town will furnish trash receptacles, electrical, water, and sewer utilities for the Premises and will maintain both the building and Park in a usable state.

SECTION FIVE. CONCESSIONAIRE PERFORMANCE. The Concessionaire shall:

- (a) at its own expense, furnish all furniture, fixtures and equipment, beyond that of the Town's current provisions, needed for operation of the Concession on the Premises;
- (b) provide for sale to the public from the Premises such food, beverage and other items as have previously been approved in writing by the Parks and Recreation Director ("Director"). The Director shall at all times be provided a current list of the price charged of all items offered for sale;
- (c) at a minimum, operate the Concession from the Premises on the dates and at the times set forth in writing from time to time by the Director. The Concessionaire may operate the Concession on additional dates and at additional times when public activities are taking place at the Park. It is expressly understood that the Concessionaire does not have exclusive rights during those periods in which sports leagues and other permitted users of the Premises to sell refreshments to obtain their own revenue;
- (d) wear (and have all employees and agents wear) appropriate attire and provide polite, professional service to patrons;
- (e) refrain from advertising or soliciting outside of the Premises unless granted written approval by the Director;
- (f) not install or keep on the Premises any vending machines without written approval by the Director;
- (g) promptly report security and mechanical problems to the Director (or designee), and refrain from direct involvement in security problems unless absolutely necessary;
- (h) not make any changes in, alterations to or additions to, or remove any portion of the building or any equipment belonging to the Town without having first obtained the written consent of the Director. Any expenses stemming from alterations or additions requested by the Concessionaire and approved by the Director shall be borne by the Concessionaire;
- (i) any approved physical changes that occur to the property / infrastructure of the Concession Stand become the property of the Town and shall remain upon termination of the service agreement / contract;
- (j) not by reason of any of the privileges granted hereunder shall the Concessionaire

direct or interfere with any of the activities conducted within the Park;

- (k) at all times maintain the Premises in a clean condition so that it is entitled to an "Eating and Drinking Permit" from the Yavapai County Health Department. All paper and other debris in and around the Premises must be picked up hourly during operating time. Failure to keep the Premises in a satisfactory condition may result in the Town cleaning the area and charging actual cost to the Concessionaire;
- (l) clean, maintain and, if damaged by other than the normal wear and tear, repair/replace the equipment and furnishings within the Concession Stand as provided by the Town; and
- (m) otherwise operate the Concession in compliance with applicable federal, state, county, and local laws and regulations.

SECTION SIX. PERMITS AND LICENSES. The Concessionaire shall acquire and keep current a Prescott Valley Business License for the period in which the Concessionaire operates the Concession under this Agreement. The Concessionaire shall also provide the Town with proof of having acquired and kept current applicable Yavapai County Health Department permits prior to operating the Concession. Finally, the Concessionaire shall provide the Town with the Concessionaire's state and local tax number prior to operating the Concession.

SECTION SEVEN. EXCLUSIVE BEVERAGE AGREEMENTS. The Concessionaire shall abide by any agreements to which the Town may be a party granting beverage distributors an exclusive right to have their products served at the Park. In such cases, the Concessionaire shall have the benefit of any such agreements that provide discount pricing for third-party concessionaires.

SECTION EIGHT. ALCOHOLIC BEVERAGES. The Concessionaire is not authorized to sell or distribute alcoholic beverages at any event or activity under this Agreement. Furthermore, private consumption of alcoholic beverages by the Concessionaire, its employees, or its agents while operating the Concession is expressly prohibited.

SECTION NINE. RESPONSIBILITY FOR LIABILITIES AND CLAIMS. Each party hereto agrees to indemnify the other party, its officers, employees, agents and successors, against (and to save and hold each other harmless from) all sums which the other party, its officers, employees, agents or successors, may be obligated to pay by reason of any liability imposed upon any of them for damages arising out of any error, negligence, omission or act of each party or any person employed by them, or any others for whose acts each party is legally liable. The sums shall include, in the event of any such action, court costs, settlement costs, expenses of litigation, and reasonable attorneys' fees.

In no event shall either party be liable to the other for damages incurred (including damages related to lost revenues) due to weather, transportation disruptions, riots, Acts of God, or similar

events beyond the control of either party that result in cancellation or curtailment of an event or activity.

SECTION TEN. INSURANCE. The Concessionaire agrees to purchase and maintain worker's compensation coverage as required by statute, covering any of the Concessionaire's personnel or agents involved in the performance of the Concession. The Concessionaire also agrees to purchase and maintain standard commercial liability insurance (including automobile liability insurance) in a minimum single limit policy of \$2,000,000 covering all claims aggregate, plus costs of defense, covering the Concessionaire's activities during the operation of the Concession. The Town shall be named as an additional insured in such liability policy or policies. The Concessionaire shall provide the Town with proof of such insurance prior to operation of the Concession.

SECTION ELEVEN. LIMITATIONS OF AGREEMENT. Nothing herein establishes a joint venture or partnership between the parties. It is expressly understood that nothing herein authorizes the Concessionaire to enter into any contracts or agreements with third-parties on behalf of the Town, nor to incur any debts or other liabilities on behalf of the Town.

SECTION TWELVE. IMMIGRATION REFORM AND CONTROL ACT. It is understood by the parties that under the Immigration Reform and Control Act of 1986, employers are prohibited from hiring persons not authorized to work in the United States. The Act subjects employers to civil and criminal penalties for violating this ban. The Concessionaire agrees to comply with the Act by verifying that each and every employee (and applicant for employment) involved with this concession has the legal right to work in the United States.

SECTION THIRTEEN. ACCESS FOR THOSE WITH DISABILITIES. It is understood by the parties that under the Americans with Disabilities Act of 1991 and the Arizonans with Disabilities Act of 1992, employers must provide reasonable accommodations for employees who are disabled, and governmental entities and private businesses must provide the disabled with access to their respective programs and services. The Concessionaire agrees to comply with these Acts in its operation of the Concession.

SECTION FOURTEEN. DRUG-FREE WORKPLACE. It is understood by the parties that the Town has adopted a policy establishing a drug-free workplace for itself and persons and entities doing business with the Town. The Concessionaire agrees to be drug-free and to require that its employees and agents remain drug-free during their operation of the Concession. Being drug-free includes refraining from the manufacture, distribution, dispensing, possession, and illegal use of controlled substances.

SECTION FIFTEEN. RECORDS. The Concessionaire shall keep books and accounts of its concession business operation in a method and form as approved by the Director, said books and accounts to be at all reasonable times open for inspection and audit by the Town's authorized agents. The Concessionaire shall furnish a financial report of its operation each month and such other information as the Director shall require.

SECTION FIFTEEN. MERGER CLAUSE. This Agreement constitutes the entire agreement between the parties and all prior and contemporaneous agreements, arrangements, negotiations and understanding of the parties hereto, written or oral, are hereby superseded and merged herein.

SECTION SIXTEEN. CONSTRUCTION. Nothing herein shall be strictly construed against a party simply by reason of its having been primarily responsible for the drafting of this Agreement.

SECTION SEVENTEEN. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

SECTION EIGHTEEN. SEVERABILITY. In the event any phrase, clause, sentence, paragraph, or section of this Agreement shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and in effect to the fullest extent permissible by law and in accordance with the intent of this Agreement.

SECTION NINETEEN. CONFLICT OF INTEREST. In accordance with ARS §38-511, the Town may cancel any agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the Town is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement.

SECTION TWENTY. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Town: Parks and Recreation Director
Town of Prescott Valley
7501 E Civic Circle
Prescott Valley, AZ 86314

Concessionaire: RG Keen, Owner
Keenco Inc/Franks Alot
5860 N. Robert Road
Prescott Valley, AZ 86314

These addresses may be changed by either party by giving notice in writing. Such changes shall be deemed to have been effectively noticed five (5) calendar days after being mailed to the other party by the party changing the address.

SECTION TWENTY-ONE. ASSIGNMENT BY CONCESSIONAIRE. The Concessionaire was chosen to be a party to this Agreement based upon its qualifications. Therefore, any assignment of the Concessionaire's obligations hereunder, unless approved by the Director prior thereto, is expressly prohibited.

Nothing herein shall preclude the Town from assigning its payments under this Agreement.

SECTION TWENTY-TWO. SUCCESSORS-IN -INTEREST. Any successors, executors, or administrators of the Concessionaire and any assignees of the Concessionaire's interests herein shall be bound to the Town to the full legal extent to which the Concessionaire is bound with respect to each of the covenants, conditions and promises of this Agreement.

SECTION TWENTY-THREE. THIRD PARTIES. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

SECTION TWENTY-FOUR. AMENDMENTS. This Agreement may only be amended by a written agreement fully executed by the parties through their authorized representatives.

SECTION TWENTY-FIVE. WAIVER. No waiver of any part of a breach of any of the covenants, conditions or promises in this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or promise herein. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof.

SECTION TWENTY-SIX. REMEDIES UPON DEFAULT. This Agreement may be terminated by either party in the event of a substantial default by the other party. Termination shall be effected by delivering to the defaulting party a Notice of Termination specifying the default, and the date upon which termination will become effective. In addition, the non-defaulting party may exercise all rights and remedies available to him/her or it at law or in equity including, without limitation, the right to specifically enforce any term or provision hereof, and/or the right to institute an action for damages. In the event any action shall be instituted between any of the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of his/her or its costs, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Vending Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY,
a municipal corporation of Arizona,
"Town"

Approved By Vendor
"RG Keen"

Harvey C. Skoog, Mayor

By:

ATTEST: Town of Prescott Valley

BY: _____
Diane Russell, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

BY: _____
Ivan Legler, Town Attorney

STATE OF ARIZONA)

) ss:

County of Yavapai)

The foregoing instrument was acknowledged before me this 9th day of February, 2012, by Harvey C. Skoog, Mayor of the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, on behalf of said municipal corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)

) ss:

County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public

My Commission Expires: